Supreme Court, U. S.
FILED
JAN 5 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-812

HENRY CARL DEAN,

Petitioner,

vs.

AMERICAN SECURITY INSURANCE COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAVID R. AUFDENSPRING
R. CARL CANNON

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STATEMENT OF THE CASE

Respondent is satisfied with Petitioner's "Statement" of the case.

ARGUMENT

The Petitioner has petitioned the Court for a writ of certiorari to review the Fifth Circuit's decision that neither general damages for pain and suffering nor punitive damages may be recovered under the provisions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq. (hereinafter the "ADEA"). The Respondent respectfully submits that there are no "special or important" reasons justifying the Court's review as required by Rule 19 of the Supreme Court Rules in that the Fifth Circuit's decision is not in conflict with the decision of any other court of appeals and the ADEA clearly does not authorize awarding either general damages for pain and suffering or punitive damages.

The Fifth Circuit's decision that the ADEA does not authorize recovery of general damages for pain and suffering is clearly in accord with the decision of the only other court of appeals which has considered the issue. See Rogers v. Exxon Research & Engineering Co., 550 F.2d 834 (3d Cir. 1977), petition for cert. filed, 46 U.S.L.W. 3108 (U.S. April 20, 1977) (No. 76-1451). Moreover, the decision is also in accord with the decisions of the majority of district courts outside the Fifth and Third Circuits. See Travers v. Corning Glass Works, Inc., 15 F.E.P. Cases 584 (S.D.N.Y., Sept. 1, 1977); Fellows v. Medford Corp., 431 F. Supp. 199 (D. Ore. 1977); Looney v. Commercial Union Assurance

Companies, 428 F. Supp. 533 (E.D. Mich. 1977); Hannon v. Continental National Bank, 427 F. Supp. 215 (D. Colo. 1977); Sant v. Mack Trucks, Inc., 424 F. Supp. 621 (N.D. Cal. 1976). Contra, Walker v. Pettit Construction Co., 16 F.E.P. Cases 118 (D.S.C., Sept. 30, 1977); Coates v. National Cash Register Co., 433 F. Supp. 655 (W.D. Va. 1977); Bertrand v. Orkin Exterminating Co., 432 F. Supp. 952 (N.D. Ill. 1977); Combes v. Griffin Television, Inc., 421 F. Supp. 841 (W.D. Okla. 1976).

In addition, although the Fifth Circuit is the only court of appeals which has considered whether the ADEA authorizes recovery of punitive damages, its decision is consistent with the Third Circuit's

reasoning in Rogers v. Exxon Research & Engineering Co., supra. Furthermore, of the district courts outside the Fifth Circuit, only one has held that punitive damages may be recovered under the ADEA. See Walker v. Pettit Construction Co., supra. All the rest have agreed that the ADEA does not authorize recovery of such damages. See Fellows v. Medford Corp., supra; Looney v. Commercial Union Assurance Companies, supra; Hannon v. Continental National Bank, supra; Platt v. Burroughs Corp., 424 F. Supp. 1329 (E.D. Pa. 1976).

Finally, the paucity of lower court decisions regarding these issues renders review by the Court particularly inappropriate at this time.

CONCLUSION

For the foregoing reasons, the Respondent respectfully submits that the Court should deny the Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served two copies of the foregoing Brief in Opposition to Petition For a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit on counsel for the Petitioner in this matter by mailing the same in a properly addressed envelope in the United States Mail, with sufficient postage thereon, to:

Mr. Bruce D. Duncan
Mr. Charles E. Moore
325 Hammond Drive
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This 4th day of January, 1978.

R. Carl Cannon
R. CARL CANNON
Counsel for Respondent